

GURMAN BLASK & FREEDMAN

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DOCKET FILE COPY ORIGINAL

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May 8, 1997

Hand Delivered

Mr. David Furth, Chief
Commercial Wireless Division - WTB
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAY 8 1997

Federal Communications Commission
Office of Secretary

Re: **Ex Parte**
WT Docket No. 96-18
Loss of Authorized 931 MHz Paging Sites
(File Nos. 30327/32306/25178- 95)

Dear Mr. Furth:

On behalf of our client ProNet Inc. ("ProNet"), this letter follows-up my January 28, 1997 letter (attached as Exhibit 1 hereto) and our subsequent discussion concerning options available to paging carriers whose authorized 931 MHz transmitter sites had become unavailable through no fault of their own. My January 28, 1997 letter, which preceded release of the Second Report and Order in WT Docket No. 96-18 ("2nd R&O"),^{1/} explained that interim licensing rules adopted in the First Report and Order in WT Docket No. 96-18 ("Interim Licensing Rules") were nullifying valid 931 MHz Construction Permits ("CPs") where space at the originally proposed site was unavailable because:

- (a) the original, authorized site was on the perimeter of an existing wide-area system and, thus, the proposed replacement site extended that system's composite interference contour in violation of the Interim Licensing Rules; or
- (b) the original site was either part of an entirely new system or a stand-alone site thus warranting a Section 22.142(d) relocation application, which the Interim Licensing Rules also prohibited.

^{1/}Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, Second Report and Order (released February 24, 1997).

The permanent rules adopted in the 2nd R&O fail to resolve the hardship and injustice caused by the two situations just described, even though ProNet specifically raised this matter and requested relief on *six* different occasions during various stages of this proceeding.^{2/} As a result, ProNet faces imminent forfeiture of valuable CPs.^{3/} Ironically, the inordinate delay in 931 MHz processing by the Commission is the principal reason that authorized transmitting sites are no longer available to carriers like ProNet. Thus, immediate relief is necessary— either through expansion and written confirmation of your earlier verbal advice to me, or through prompt reconsideration and clarification of the 2nd R&O.

The CPs at issue here are based on applications filed in 1994 and 1995, but granted by the Commission in May and July 1996. During this protracted processing interval, demand for transmitting space by PCS, SMR, cellular, MMDS and other wireless services has expanded exponentially. Repeatedly, ProNet has discovered that sites originally requested in connection with expansion of existing 931 MHz paging networks are no longer available. In the three cases listed below, ProNet has located substitute tower space less than two miles from the currently-inaccessible originally-authorized sites:^{4/}

^{2/}Specifically, ProNet raised this issue in its: March 1, 1996 "Comments on Interim Licensing Proposal" (at 19-20); March 11, 1996 "Reply Comments on Interim Licensing Proposal" (at 14-15); March 18, 1996 "Comments on Geographic Licensing and Competitive Bidding" (at 13); April 1, 1996 "Reply Comments on Geographic Licensing and Competitive Bidding" (at 19-20); June 10, 1996 Petition for Partial Reconsideration of the *1st R&O* (at 9); and July 17, 1996 Petition for Reconsideration of the Commission's *Order on Reconsideration of 1st R&O* (at 9-10). The matter was addressed anew in ProNet's "Petition for Reconsideration of Second Report and Order" (at 14), filed April 11, 1997.

^{3/}The *2nd R&O* (at ¶57) suggests that a geographic licensee may consent to a contour-expanding site relocation by an incumbent. Leaving aside the impracticality of obtaining such consent from a competitor, no geographic licensees currently exist. Moreover, it may take a year or more to issue such geographic licenses because: multiple petitions for reconsideration have been filed with respect to the *2nd R&O*; even after these petitions are resolved, there will be some delay in scheduling auctions and additional delay in licensing auction winners; and, finally, there are more than 100 paging channels to be auctioned. ProNet, however, has CPs expiring in May and July 1997 where the underlying site is no longer available.

^{4/}The subject CPs were issued to Contact Communications Inc. ("Contact"), a wholly-owned ProNet subsidiary. Contact has learned that sites proposed in other pending applications, which it expects will be granted, are also unavailable.

Mr. David Furth
May 8, 1997
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<u>File No.</u>	<u>CP Expires</u>	<u>City/State</u>	<u>Original Lat/Long</u>	<u>Replacement Lat/Long</u>	<u>Distance</u>
30327-95	5/17/97	Bourbonnais, IL	41-09-39 N 87-52-30 W	41-09-24 N 87-52-16 W	0.35 miles
32306-95	7/26/97	Sandestin, FL	30-22-41 N 86-19-42 W	30-23-07 N 86-18-03 W	1.72 miles
25178-95	7/27/97	Jacksonville, FL	30-19-08 N 81-39-24 W	30-19-27 N 81-39-50 W	0.56 miles

Attached hereto as Exhibits 2-4 are maps depicting the 50 mile interference contours associated with the original and replacement transmitting sites. These maps demonstrate that the coverage increase resulting from the proposed change in sites is truly *de minimis*.

The rules promulgated in the 2nd R&O, however, bar using these alternate sites for the following reasons:

- the originally authorized sites are on the periphery of ProNet's existing wide-area systems; because the 2nd R&O defines the interference contours for *all* 931 MHz sites as circles with fixed radii of at least 50 miles, pursuant to Section 22.537(f), Table E-2, the replacement sites' interference contours will necessarily extend the systems' composite interference contours; thus, the replacement sites fail to qualify as permissive fill-ins under revised Section 22.165(d);
- under the Interim Licensing Rules, your staff advised that licensees were permitted to use a 21 dB μ V/m formula^{5/} to derive the interference contour of proposed transmitters (while deriving a system's composite contour based on fixed-radii circles) to determine whether these proposed transmitters qualified as fill-ins;^{6/}

^{5/}In the initial *NPRM* in WT Docket No. 96-18, the Commission proposed replacing Table E-2 of Section 22.537(f) with a formula employing a median field strength of 21 dB μ V/m, and initially identified this 21 dB μ V/m formula as determining interference contours under the Interim Licensing Rules.

^{6/}Although the Commission did not issue a Public Notice regarding this policy, the Bureau staff confirmed this interpretation of the Interim Licensing Rules to this firm and other representatives of paging licensees. Letters confirming this clarification with the Bureau staff from
(continued...)

Mr. David Furth
May 8, 1997
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however, the 2nd R&O rejected the 21 dBuV/m formula in favor of the fixed- radii circles specified in Section 22.537(f), Table E-2, thereby precluding ProNet from relocating these facilities while remaining wholly within the corresponding authorized site's interference contour; and

- although Section 22.142(d) allows the authorization holder to file an application to relocate the transmitter notwithstanding the underlying construction authorization's pending expiration, the 2nd R&O (at ¶6) states that *no* paging applications filed after July 31, 1996 will be processed.

The foregoing provisions of the 2nd R&O deprive ProNet of the ability to relocate authorized transmitter sites that have become unavailable due to conditions beyond ProNet's control. Thus, ProNet faces an untenable position in its efforts to fulfill the terms and conditions of the above-referenced construction authorizations, notwithstanding its efforts to obtain alternative sites that make minuscule changes to the authorized composite contours of existing wide-area 931 MHz systems, as illustrated by Exhibits 2-4 hereto. Absent relief from the Commission, ProNet (and other similarly-situated carriers) will be precluded from providing valuable public service.

Following my January 28 letter, you verbally advised me that in situations as described above, licensees may relocate their authorized transmitters within a 1.2 miles radius on a permissive basis, *i.e.*, as a minor modification.^{7/} As shown above, however, even this standard is insufficient to allow ProNet to utilize one replacement site listed above, notwithstanding the minuscule increase in interference contour coverage resulting from that change. Therefore, it is imperative that the Commission take additional steps to accommodate ProNet (and other similarly situated carriers faced

^{6/}(...continued)

three different firms dated April 10, 1996, April 18, 1996 and June 19, 1996, respectively, are attached hereto as Exhibit 2.

^{7/}As you noted, this permissive relocation is analogous to Section 22.131(d) of the Rules, as adopted in *Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, CC Docket No. 92-115, 9 FCC Rcd 6513 (1994) ("Part 22 Rewrite"), *stayed by Order*, CC Docket No. 92-115, 10 FCC Rcd 4146 (1995) ("*Stay Order*"). Specifically, Section 22.131(d)(2)(iii) defines an "application for initial authorization" as an application requesting a new transmitter more than 2 km (1.2 miles) from any existing co-channel transmitter. Thus, relocation of a transmitter less than 1.2 miles from the authorized site is not an "initial application" subject to a 30-day notice and cut-off filing group under Section 22.131(a). You reasoned that, although Section 22.131(d) has been stayed indefinitely, the underlying policy enabling rapid consideration of relocations or new transmitters within 1.2 miles of an authorized site is directly applicable here.

Mr. David Furth
May 8, 1997
Page 5 of 5

with lost transmitter sites), either by allowing permissive relocation of sites less than three miles,^{8/} or by accepting relocation applications pursuant to Section 22.142(d).

In addition, we renew our request, expressed repeatedly throughout the proceeding in WT Docket No. 96-18, that the Commission formally modify its rules to account for the unanticipated loss of transmitter sites due to circumstances beyond the licensee's control. This may be accomplished by allowing licensees to: (a) use a 21 dB μ formula or real-world showing to demonstrate that authorized interference contours will not be exceeded by relocation of a transmitter;^{9/} (b) file applications under Section 22.142(d) where transmitter sites are lost;^{10/} or (c) relocate authorized facilities less than three miles on a permissive basis as set forth above.

Please refer any questions concerning this matter to undersigned counsel for ProNet Inc.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerome K. Blask", with a stylized flourish at the end.

Jerome K. Blask

cc (w/encl): Jeff Owens

^{8/}Should the Commission so require, ProNet will willingly notify the Commission of all such permissive relocations, and include a certification that the originally authorized site was lost due to circumstances beyond its control.

^{9/}In its April 11, 1997 Petition for Reconsideration (at 4), ProNet requested that the Commission clarify its 2nd R&O to confirm that CP interference contours are included in an incumbent's composite interference contours.

^{10/}Such applications should be processed under the applicable provisions of Section 22.131.

EXHIBIT 1

GURMAN BLASK & FREEDMAN

C H A R T E R E D

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1400 SIXTEENTH STREET, N.W.

WASHINGTON, D.C. 20036

TELEPHONE (202) 328-8200

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(202) 462-1786

January 28, 1997

Via Telecopy

Mr. David Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Loss of Authorized Paging Sites

Dear David:

This is in connection with the voice-mail message I left for you on Friday, January 24, 1997 concerning the difficulties paging carriers are encountering in constructing certain authorized facilities under the Interim Licensing Rules.

Carriers holding construction authorizations for 931 MHz and other common carrier paging bands are discovering that, due to the protracted interval between filing and grant of applications, no space exists on antenna supporting structures specified in their granted applications. Although replacement sites may be available within two to three miles from originally-authorized sites, the Interim Licensing Rules established in WT Docket No. 96-18 effectively preclude using these alternates where:

- the original site is on the perimeter of an existing wide-area system and the replacement site's interference contour will extend the composite interference contour associated with the system's constructed facilities; as a result, the replacement site fails to qualify as a permissive, fill-in under the Interim Licensing Rules; or
- the original site is either a stand-alone facility or part of an entirely new system; in either case, Section 22.142(d) allows the authorization holder to file an application to relocate the transmitter notwithstanding the underlying construction authorization's pending expiration; a Public Notice (FCC Clarifies Processing Of License Applications Under Interim Paging Rules, DA 96-930, released June 10, 1996) suggested (and Commission staff has confirmed) that *no*

Mr. David Furth
January 28, 1997
Page 2

paging applications filed after July 31, 1996 will be processed. This processing restriction also bars carriers from applying for replacement sites located within forty (40) miles of existing, licensed sites in accordance with the Interim Licensing Rules.

Thus, paging carriers attempting to fulfill the terms and conditions of their construction authorizations are thrust into an untenable position by the Interim Licensing Rules. A solution to this problem is urgently needed. One possibility is to allow entities holding construction authorizations a blanket waiver to construct facilities anywhere within a fixed radius of the originally-authorized site. A radius of at least three miles appears appropriate. In addition, the Commission could begin accepting and processing applications filed pursuant to Section 22.142(d) of the Rules.

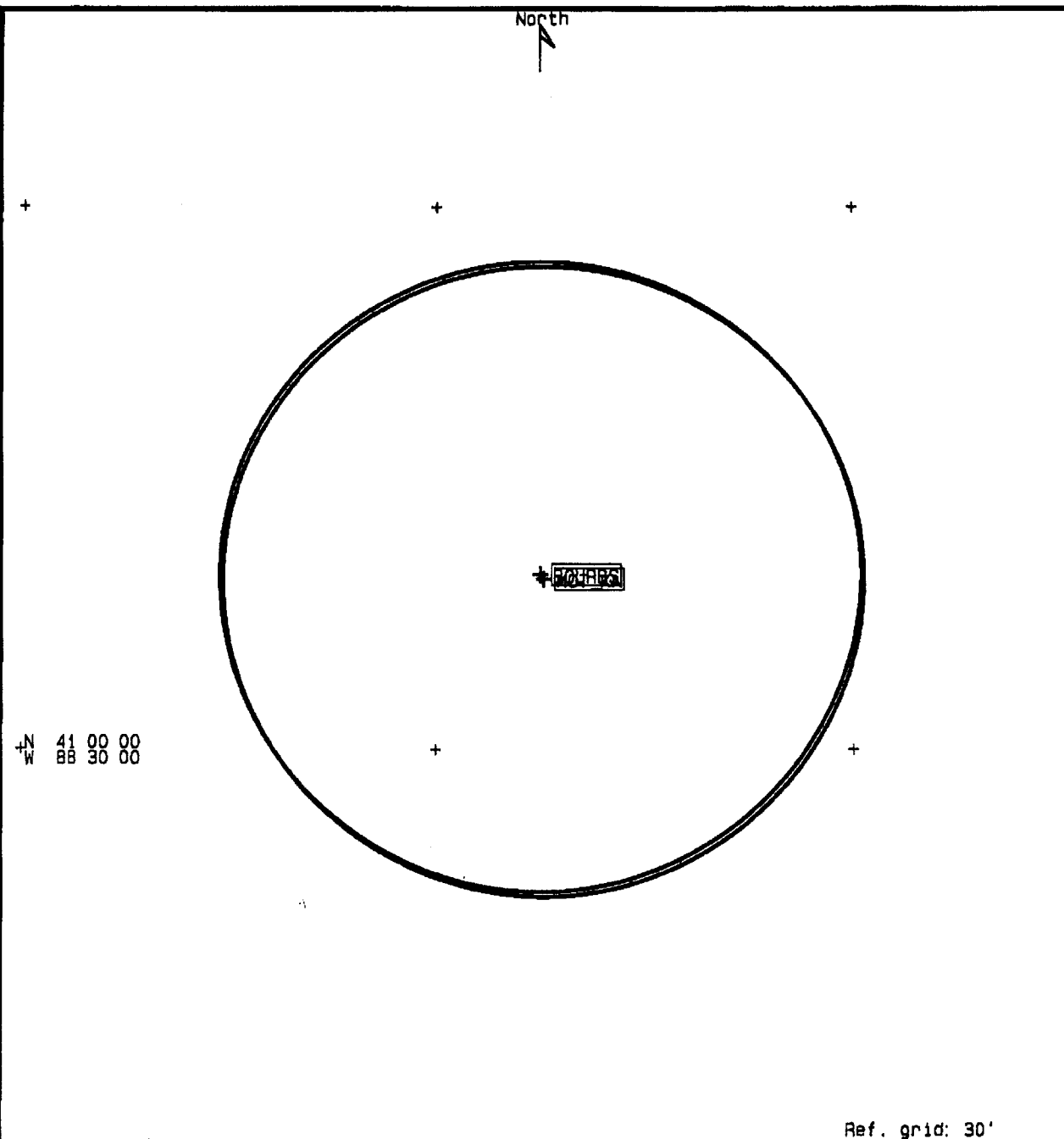
I have discussed this issue on several occasions with Mika Savir and Sam Gumbert of the Commercial Wireless Division's Narrowband Radio Branch. They advised that I speak directly with you. The site availability problem described here is preventing my clients from constructing facilities approved by the Commission with which a valuable public service could be provided. These clients urgently need guidance concerning a suitable resolution of the situation. Accordingly, if you could call me as soon as possible to discuss this matter (202-328-8200), I would be most appreciative.

Very truly yours,

A handwritten signature in cursive script, reading "Jerome K. Blask". The signature is written in dark ink and is positioned above the printed name.

Jerome K. Blask

EXHIBIT 2



CVR (tm): data\kankakee.pro
 Propagation model: FCC-Pt22
 Time: 50.00% Loc: 50.00% Margin: .0 dB
 Climate: Continental Temperate
 Gndcvr: None
 Atm. factor: None
 K Factor: 1.333
 RX Antenna: Omni
 Height: 5.9 feet AGL Gain: .0 dBd

Field strength (at remote)

■ 80.0 dBuV/m

Minimum threshold level: -150.0 dBmW

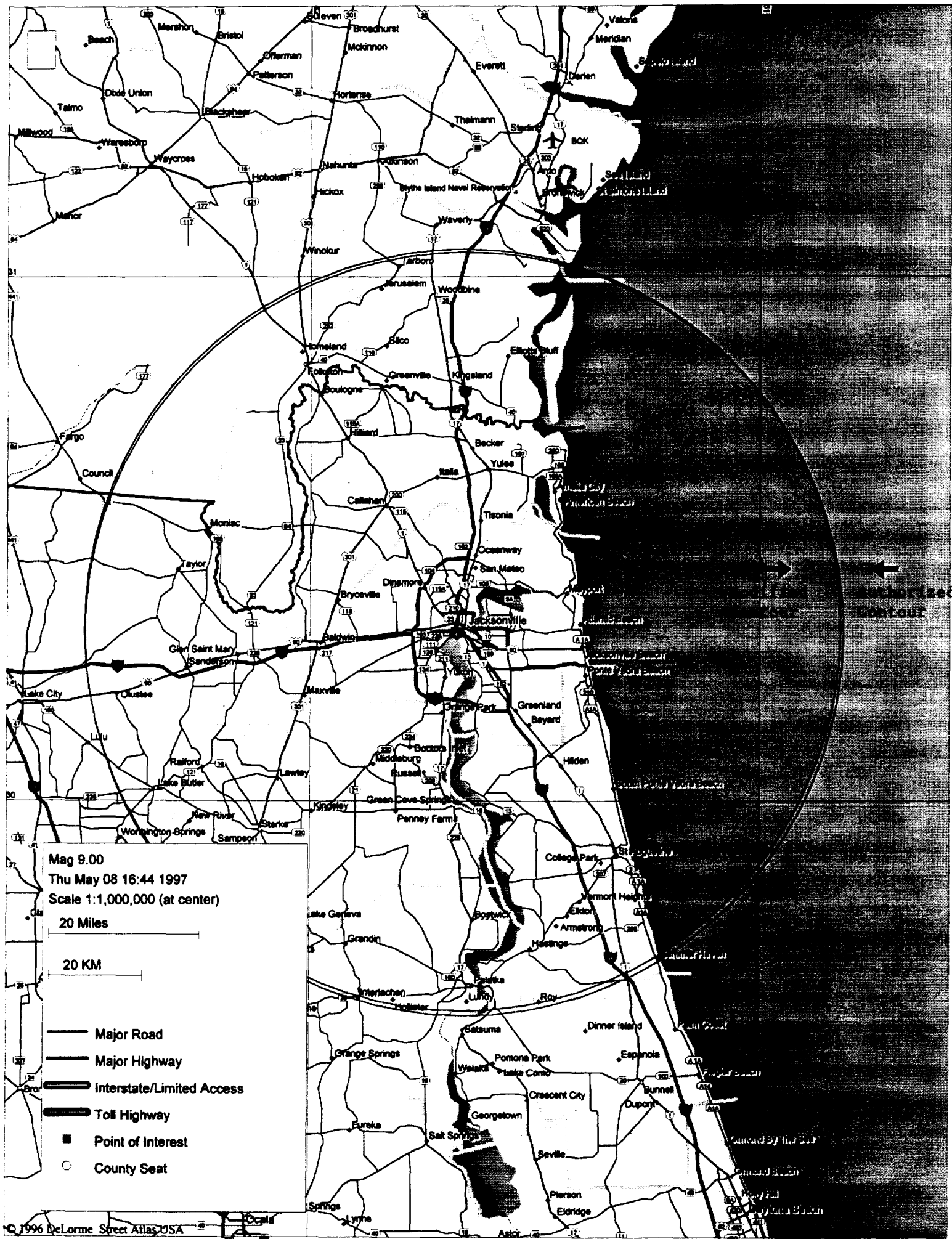
Site	Ant Elv		Ant. Type /Orient.	Coordinates
	AMSL (feet)	ERPd (dBW)		
BOURBONNAIS	910.0	26.61	OM-V	N 41 9 39.00
grp: 1	931.5625 MHz			W 87 52 30.00
MOT_KN	906.0	26.61	OM-V	N 41 9 24.00
grp: 1	931.5625 MHz			W 87 52 16.00



ProNet Communications
 931.3625 Bourbonnais CP
 970428 Comparison

EXHIBIT 3

EXHIBIT 4



Mag 9.00
Thu May 08 16:44 1997
Scale 1:1,000,000 (at center)
20 Miles

20 KM

- Major Road
- Major Highway
- Interstate/Limited Access
- Toll Highway
- Point of Interest
- County Seat

EXHIBIT 5

ORIGINAL

FOR LATE FILED

LAW OFFICES

BLOOSTON, MORDKOFKY, JACKSON & DICKENS

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NICHOLAS J. NIKOLOPOULOS*
D. CARY MITCHELL

*NOT ADMITTED IN D.C.

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ARTHUR BLOOSTON
OF COUNSEL

EUGENE MALISZEWSKYJ
DIRECTOR OF ENGINEERING
PRIVATE RADIO

SEAN A. AUSTIN
DIRECTOR OF ENGINEERING
COMMERCIAL RADIO

April 10, 1996

WRITER'S DIRECT DIAL NO.
(202) 828-5540

Sandra K. Danner, Deputy Chief - Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

RECEIVED

APR 11 1996

RECEIVED
COMMUNICATIONS SECTION
APR 11 1996

Re: WT Docket No. 96-18
April 5, 1996 Clarifying Public Notice
EX PARTE PRESENTATION

Dear Ms. Danner:

Pursuant to Rule Section 1.1202 et seq., this is to confirm our conversation today concerning the Commission's Public Notice, Mimeo No. DA96-538, released April 5, 1996. This Public Notice clarified paragraph 140 of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 96-18, by indicating that the Commission will continue to apply current rules to define the interference contour of existing paging systems. You have confirmed that, while licensees can use the current rules to define the composite interference contour of their existing system, these licensees may utilize the proposed 21 dBuV/m formula to define the interference contour of fill-in transmitters implemented pursuant to paragraph 140 of the NPRM. This will give incumbent licensees maximum flexibility in establishing such fill-in transmitters, since they can use directional antennas and other measures to keep the fill-in contour within the composite system contour.

You also confirmed that this policy clarification will be in effect throughout the pendency of WT Docket No. 96-18, rather than the pendency of only that part of the rulemaking devoted to establishing interim licensing procedures. Finally, you indicated that the Commission generally intends for 929 MHz licensees to have the same ability to modify their systems as 931 MHz licensees, under the interim rules. We shall

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Sandra K. Danner
April 10, 1996
Page 2

explore with the Licensing Division in Gettysburg how specific modifications are currently treated, and seek their input on proposed future modifications.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "John A. Prendergast". The signature is written in dark ink and is positioned above the printed name.

John A. Prendergast

cc: Office of the Secretary, FCC
Jonady Hom, Esq.

GURMAN, BLASK & FREEDMAN

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RETURN COPY

146

April 18, 1996

Ms. Mika Savir
Legal Branch - Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

RECEIVED
APR 18 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte
WT Docket No. 96-18
Interim Policy Regarding 900 MHz "Fill-in" Transmitters

Dear Ms. Savir:

This will confirm our April 15, 1996 conversation regarding the Commission's April 5, 1996 Public Notice clarifying Paragraph 140 of the Notice of Proposed Rule Making ("NPRM") in the above-referenced proceeding. Specifically, you confirmed that, at present, the fixed radii interference contour specified in Section 22.537 of the Commission's Rules constitutes the outer perimeter or composite boundary of wide-area 929/931 MHz paging systems; the 21 dBµV/m formula proposed in the NPRM (at ¶52), however, may be employed to derive an interference contour for a proposed "fill-in" transmitter to determine whether such transmitter is wholly within a co-channel system's outer perimeter (or composite boundary) and, as a result, can be constructed and operated without prior approval by or notification to the Commission.

Based on this conversation, our clients are installing transmitting sites on a permissive basis provided the conditions set forth in Sections 22.165(a)-(c), where applicable, have been satisfied. We are advising these clients that such construction conforms with the Commission's Interim Licensing Proposal, as set forth in the NPRM (at ¶¶140-141).

Should the foregoing be inaccurate in any respect, or should you have any questions regarding this matter, please contact me immediately.

Very truly yours,

Daniel E. Smith

Daniel E. Smith



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

DA 96-538

News media information 202/418-0500.

April 5, 1996

WIRELESS TELECOMMUNICATIONS BUREAU CLARIFIES DEFINITION OF INTERFERENCE CONTOUR FOR INTERIM PAGING RULES

In the *Notice of Proposed Rulemaking* released on February 9, 1996 in WT Docket No. 96-18 (*Notice*), the Commission stated that incumbent paging licensees could add sites to existing systems or modify existing sites during the pendency of the rulemaking proceeding if the addition or modification did not expand the interference contour of the incumbent's existing system. *See Notice* at para. 140. In a footnote, the Commission referenced a proposal in the *Notice* to base the interference contour on a median field strength of 21 dB μ V/m. *Id.* at n. 271. Some parties have interpreted this reference as adopting a change in our rules with respect to the interference contour definition for paging systems.

We clarify that during the pendency of this rulemaking proceeding, the Commission will continue to apply current rules to define the interference contour of existing paging systems. *See* 47 CFR § 22.537. Therefore, pursuant to the *Notice*, paging licensees should use the interference contour as defined for their particular frequencies under our current rules to determine whether internal sites may be added or modified. In the case of licensees on 929 MHz exclusive channels, the rules defining interference contours for 931 MHz systems should be used. *See* 47 CFR § 22.537(f).

Action by Michele C. Farquhar, Acting Chief, Wireless Telecommunications Bureau.

For further information contact Mika Savir, Wireless Telecommunications Bureau,
Commercial Wireless Division, at (202) 418-0620.

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EX PARTE OR LATE FILED

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTHMANN
JOHN P. SARTIGLIA
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ELLEN S. MANDELL
HOWARD J. BURR
MICHAEL J. LENHORN
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June 19, 1996

Laura Smith, Esquire
Legal Branch - Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

RECEIVED

JUN 19 1996

Re: WT Docket No. 96-18
Ex Parte

Dear Ms. Smith:

This is written pursuant to Rule Section 1.1202 to confirm our conversation today clarifying the procedure to determine the interference contour of proposed fill-in transmitters for existing paging systems during the pendency of the Notice of Proposed Rulemaking (NPRM) in WT Docket No. 96-18. While we understand that licensees should define the composite interference contours comprising the outer perimeter of their existing systems based on Section 22.537 of the rules, we asked for clarification as to whether licensees may use the 21 dBuV/m formula discussed at §52 and n. 271 of the NPRM to define the interference contour of fill-in transmitters added to existing systems pursuant to §140 of the NPRM. You advised that you have conferred with Mika Savir of the Legal Branch regarding this matter, and the Bureau has an internal policy which allows licensees to elect whether to use Section 22.537 or the 21 dBuV/m formula to define the interference contour of fill-in transmitters added during the pendency of WT Docket No. 96-18.

Should the foregoing be inaccurate in any respect, or should there be any questions regarding matter, please contact me immediately. Thank you for your assistance in this matter.

Very truly yours,

PEPPER & CORAZZINI, L.L.P.

By Ellen S. Mandell
Ellen S. Mandell

cc: Sandra K. Danner
Mika Savir
James S. Gumbert

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